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18  
19 UNITED STATES DISTRICT COURT  
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21 FOR THE NORTHERN DISTRICT OF CALIFORNIA

22 BETTY DUKES, PATRICIA SURGESON,  
23 CLEO PAGE, DEBORAH GUNTER, KAREN  
WILLIAMSON, CHRISTINE KWAPNOSKI,  
24 AND EDITH ARANA on behalf of themselves,  
and on behalf of all other similarly situated,

CASE NO. C 01-2252 VRW (EMC)

JOINT CASE STATUS REPORT

25 Plaintiffs,

26 v.

27 WAL-MART STORES, INC.,

28 Defendant.

1                   **Pursuant to the Court's order dated July 7, 2008, the parties respectfully submit this**  
2 **joint case status report.**

3                   On June 8, 2001, Betty Dukes filed a pro per single-plaintiff race discrimination claim against  
4 Wal-Mart Stores, Inc. She and five additional plaintiffs filed a First Amended Complaint on June 19,  
5 2001 alleging that Wal-Mart discriminated against female store employees with respect to pay and  
6 promotions. Plaintiffs sought class-wide declaratory and injunctive relief, as well as backpay and  
7 punitive damages, under Title VII of the Civil Rights Act of 1964, on behalf of themselves and the  
8 purported class. The complaint has since been amended twice; the operative complaint was filed on  
9 September 12, 2002. Wal-Mart timely filed its answer to that Third Amended Complaint on Novem-  
10 ber 25, 2002.

11                  From 2001 to 2003, the parties participated in extensive discovery, which included nearly 200  
12 depositions, as well as numerous interrogatories and requests for admission. Wal-Mart also produced  
13 more than a million pages of documents to plaintiffs.

14                  On April 28, 2003, plaintiffs moved for class certification pursuant to Rule 23(b)(2). Wal-  
15 Mart filed an opposition on June 12, 2003; plaintiffs filed a reply brief in support of the motion for  
16 class certification on July 2, 2003. On June 21, 2004, Judge Jenkins issued an order certifying a class  
17 pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

18                  On August 13, 2004, the Ninth Circuit granted Wal-Mart's petition for permission to appeal  
19 from the class certification order pursuant to Federal Rule 23(f) (case number 04-16688). The Ninth  
20 Circuit also granted plaintiffs' conditional cross-petition for permission to appeal the portion of the  
21 district court's order denying certification with respect to promotion claimants for whom there is no  
22 objective evidence of interest in a promotion (case number 04-16720).

23                  On September 27, 2004, Judge Jenkins entered an order staying discovery until the appellate  
24 proceedings are concluded. On plaintiffs' request, that stay was partially lifted to allow the April 2,  
25 2008 deposition of former Wal-Mart vice chairman Thomas M. Coughlin, III, in advance of which  
26 Wal-Mart produced tens of thousands of additional documents. The parties have not otherwise  
27 sought to modify the discovery stay.

1           On February 6, 2007, the Ninth Circuit panel issued a 2-1 decision affirming the certification  
 2 order in its entirety. Wal-Mart filed a petition for rehearing *en banc*, which was supported by briefs  
 3 from seven amici. At the Ninth Circuit's request, plaintiffs filed a response, which was supported by  
 4 briefs from six additional amici. Wal-Mart filed a motion for leave to file a reply brief, which was  
 5 accepted by the court.

6           On December 11, 2007, the Ninth Circuit panel issued a revised 2-1 opinion and simultane-  
 7 ously denied Wal-Mart's petition for rehearing *en banc* as "moot." Although the revised opinion  
 8 suggests that the class may have to be narrowed by the district court, the majority again affirmed the  
 9 certification order in its entirety.

10          On January 9, 2008, Wal-Mart filed a petition for rehearing *en banc* of the December 11,  
 11 2007 decision. Wal-Mart again challenges whether this class was appropriately certified, arguing  
 12 among other things that Rule 23(b)(2) is not applicable because plaintiffs' claims for monetary relief  
 13 predominate and that the class claims cannot be tried consistently with Title VII and the Constitution.  
 14 This petition is supported by briefs from seven amici. The same day, plaintiffs petitioned for panel  
 15 rehearing, challenging that part of the new decision holding that former employees as of the date the  
 16 action was filed lack standing to seek injunctive relief and remanding the case to determine whether  
 17 they should be excluded from the 23(b)(2) class. This petition is supported by one amicus brief.

18          On June 23, 2008, the panel ordered the parties to file responses to the petitions for rehearing.  
 19 Plaintiff's response was filed on July 11, 2008; Wal-Mart's response was filed on July 14, 2008.  
 20 The parties are awaiting a ruling from the Ninth Circuit on their respective petitions for rehearing.

21          DATED:      July 17, 2008

22                    THE IMPACT FUND  
 23                    BRAD SELIGMAN

24                    COHEN MILSTEIN, HAUSFELD & TOLL PLC  
 25                    JOSEPH M. SELLERS

26                    By:/s:/ Brad Seligman

27                    Brad Seligman

28                    *Attorneys for Plaintiffs*

DATED: July 17, 2008

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By:/s/ Jaime D. Byrnes  
Jaime D. Byrnes

*Attorneys for Defendant  
WAL-MART STORES, INC.*

**I, Jaime D. Byrnes attest that concurrence in the filing of this document has been obtained from each of the other signatories.**

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**DECLARATION OF SERVICE**

2 I, Robin McBain, declare as follows:

3 I am employed in the County of San Francisco, State of California; I am over the age of eighteen  
4 years and am not a party to this action; my business address is One Montgomery Street,  
5 31st Floor, San Francisco, California 94104, in said County and State. On July 17, 2008, I served the  
within:

6  
**JOINT CASE STATUS REPORT**

7 to all interested parties as follows:



9 **BY ECF (ELECTRONIC CASE FILING):** I e-filed the above-detailed documents utilizing the  
10 United States District Court, Northern District of California's mandated ECF (Electronic Case Filing) service  
on July 17, 2008. Counsel of record are required by the Court to be registered e-filers, and as such are automatically  
11 e-served with a copy of the documents upon confirmation of e-filing.

12 I certify under penalty of perjury that the foregoing is true and correct, that the foregoing  
13 document(s) were printed on recycled paper, and that this Declaration of Service was executed by me  
on July 17, 2008, at San Francisco, California.

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15 \_\_\_\_\_/s:/Robin McBain  
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17 Robin McBain  
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